

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Part 2 of the)	
Commission's Rules to Allocate the)	ET Docket No. 97-214
455-456 MHz and 459-460 MHz bands)	
to the Mobile-Satellite Service)	

ORDER

Adopted: April 29, 2002

Released: May 13, 2002

By the Commission:

I. INTRODUCTION AND BACKGROUND

1. By this action, we terminate the above-captioned proceeding and retain the existing fixed and mobile allocations for the 455-456 MHz and 459-460 MHz bands.¹ In this regard, we decline to allocate the 455-456 MHz and 459-460 MHz bands on a co-primary basis to non-voice, non-geostationary Earth-to-space operations in the Mobile-Satellite Service (MSS) at this time. We conclude that we should not move forward with these proposals prior to the 2003 World Radiocommunication Conference ("WRC-2003").

2. On October 14, 1997, the Commission released a *Notice of Proposed Rule Making (Notice)*² in response to a Region 2 MSS allocation that was established at the 1995 World Radiocommunication Conference ("WRC-95").³ The *Notice* proposed allocation of the 455-456 MHz and

¹ The 455-456 MHz band is domestically allocated on a primary basis to the land mobile service and is used by Part 74 Broadcast Auxiliary Services for remote pick-up broadcast operations (*see* 47 C.F.R. § 2.106 and Part 74 Subpart D). The 459-460 MHz band is allocated to fixed and land mobile services on a primary basis. Services in this band include a single 20 kilohertz channel centered at 459.00 MHz for oil spill clean-up operations (*see* 47 C.F.R. § 90.35(c)(8)); one- and two-way public land mobile services (*see* 47 C.F.R. § 22.561); rural radio services (*i.e.*, Basic Exchange Telephone Radio Service ("BETRS")) (*see* 47 C.F.R. Part 22 Subpart F); Part 80 maritime mobile services (*see* 47 C.F.R. §§ 2.106 and 80.373(g)); and the Air-to-Ground public radio telephone service, which is used for the provision of radiotelephone service to airborne mobile subscribers in general aviation aircraft (*see* 47 C.F.R. §§ 22.805).

² Amendment of Part 2 of the Commission's Rules to Allocate the 455-456 MHz and 459-460 MHz Bands to the Mobile-Satellite Service, ET Docket 97-214, *Notice of Proposed Rule Making*, 13 FCC Rcd 3428 (1997) ("*NPRM*").

³ *See* Final Acts of the World Radiocommunication Conference ("WRC-95") Geneva, 1995 (ITU 1996) ("Final Acts").

459-460 MHz bands on a co-primary basis to non-voice, non-geostationary MSS Earth-to-space operations (also referred to as Little LEO services), consistent with the Region 2 MSS allocation.⁴ Under the proposal, Little LEO mobile earth station (“MES”) terminals would be able to use the spectrum for Earth-to-space (“uplink”) transmissions, including service and feeder links.⁵ The Commission proposed that Little LEO operations in these bands protect incumbent stations in the fixed and mobile services that already occupy the spectrum. This proposed allocation would supplement the 4.05 megahertz of spectrum previously allocated for Little LEO services.⁶

3. In the comments filed in the proceeding,⁷ Little LEO proponents argued that this spectrum is necessary for the growth of the Little LEO industry and that spectrum sharing with incumbents is possible. However, incumbent Broadcast Auxiliary Services (“BAS”), land mobile, and Air-to-Ground public radio telephone service (“A-G”) entities opposed the allocation arguing that these bands are already congested and that new MSS operations would cause harmful interference to the incumbent operations.

II. DISCUSSION

4. We find that with the passage of time, the *Notice* and record in this proceeding has become outdated.⁸ In particular, we find that the proposals and comments therein do not adequately reflect recent developments that may have altered the needs and plans of the Little LEO community and the current views and needs of incumbents in the bands.

5. Specifically, in the recent government transfer band spectrum reallocation proceeding,⁹ we allocated the 1390-1392 MHz band to the fixed-satellite service for Little LEO feeder uplinks and the 1430-1432 MHz band for Little LEO feeder downlinks on a co-primary basis.¹⁰ The allocation is contingent on completion of ongoing studies and adoption of an international allocation for this spectrum.

⁴ The Little LEO satellite service uses constellations of low-earth orbiting (“LEO”) satellites to provide commercial radiolocation and two-way data messaging services. Operating at altitudes much lower than those in geostationary orbits, Little LEO satellites are typically deployed in constellations so that as one satellite moves out of view of a terrestrial station, another satellite will come over the horizon to maintain coverage.

⁵ A service link is a bi-directional transmission path between a satellite and subscriber earth stations. *See* Amendment of Parts 2, 25 and 97 of the Commission’s Rules with Regard to the Mobile-Satellite Service Above 1 GHz, *Report and Order*, ET Docket No. 98-142, FCC 02-23 (rel. Feb. 7, 2002). A feeder link is a radio link from an earth station at a given location to a space station, or vice versa, conveying information for a space radiocommunication service other than for the fixed-satellite service. The given location may be at a specified fixed point, or at any fixed point within specified areas. 47 C.F.R. § 2.1(c).

⁶ This allocation includes 2.2 megahertz for uplinks (at 148-150.05 MHz and 399.9-400.05 MHz) and 1.85 megahertz for downlinks (at 137-138 MHz and 400.15-401 MHz). *See NPRM*, 13 FCC Rcd at 3429 & 3433, ¶¶ 3 & 9.

⁷ The *Notice* resulted in 22 comments and 7 reply comments. Also, letters were filed by 89 air-to-ground radio telephone service subscribers urging the Commission to protect their operations.

⁸ The most recent pleading in the docket is dated April 9, 1999. *Ex Parte* filing of Leo One USA Corporation, April 5, 1999.

⁹ Reallocation of the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz Government Transfer Bands, *Report and Order and Memorandum Opinion and Order*, ET Docket No. 00-221, FCC 01-382 (rel. Jan. 2, 2002) (*Government Transfer Bands R&O*).

¹⁰ *Id.* at ¶ 55.

Without this allocation, feeder links would continue to have to share the same bands as service links. The new feeder link spectrum would allow Little LEO operators to more efficiently use existing service link spectrum to provide service to customers. The upcoming WRC-2003 is expected to consider whether additional service and feeder link spectrum should be allocated for the Little LEO service.¹¹ The United States, in its preliminary view, supports such an allocation.¹²

6. Any consideration at this time of the spectrum needs of Little LEOs must take into account the WRC-2003 preparations, any changes in the Little LEO industry, and current industry needs in light of our decision in the government transfer band spectrum reallocation proceeding. The record in this docket does not encompass these factors. Accordingly, we conclude that it would be premature for us to take any action with respect to Little LEO allocations in advance of WRC-2003. After WRC-03, we will evaluate any new allocations for this service that may arise. Considering Little LEO service and feeder link spectrum requirements at that time would allow us to make spectrum management decisions in a manner that best accommodates Little LEO spectrum needs, as well as the needs of incumbent operations.

7. We note that in previous cases where the record has been overtaken by events, the Commission has concluded that the public interest is best served by the termination of the proceeding.¹³ The present circumstances of this proceeding are of the same character, and we terminate it without prejudice to the substantive merits. We note that in other circumstances, the Commission has sometimes sought to refresh a stale record.¹⁴ We decline to do so here because we believe that any Little LEO allocation issues that remain after the *Government Transfer Bands R&O* should be addressed in conjunction with decisions taken at the WRC-2003 proceedings. Refreshing the record at this time in this proceeding would not accomplish this objective. We note, however, that we make no decision with respect to the underlying allocation proposals contained in the *Notice*. To the extent that these issues are still relevant notwithstanding the passage of time, nothing precludes us from independently evaluating them in the context of a separate proceeding.¹⁵

¹¹ WRC-03 Agenda Item 1.20.

¹² United States Preliminary Views for WRC-2003, RCS - 1363_rev2 (Oct 16, 2001) (available at http://www.fcc.gov/wrc-03/files/docs/prelimi_views/1363_rev2_uspv.pdf).

¹³ Termination of Rulemaking Proceedings, *Order*, FCC 02-3 (Jan. 11, 2002). *See also* Petition to Authorize Co-Primary Sharing of the 450 MHz Air-to-Ground Radiotelephone Service with BETRS, *Memorandum Opinion and Order*, 15 FCC Rcd 1859 (WTB, 2000) (denying a petition for rulemaking after concluding that the passage of time had made the record stale) (*Co-Primary Sharing MO&O*).

¹⁴ *See, e.g.*, Parties Asked to Refresh Record Regarding Reconsideration of Rules Adopted in Preemption of Local Zoning Regulation of Satellite Earth Stations, *Public Notice*, IB Docket No. 95-59, DA 01-2323 (rel. Oct. 5, 2001).

¹⁵ *See, e.g.*, *Co-Primary Sharing MO&O* at ¶ 4. (noting, in the context of a termination of a petition for rulemaking proceeding, that petitioners are free to file an updated petition for rulemaking if they consider the relief they requested to remain relevant to their needs).

III. ORDERING CLAUSE

8. Accordingly, IT IS ORDERED That, pursuant Sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C §§154(i) and (j), and Section 1.425 of the Commission's Rules, 47 C.F.R. § 1.425, the proceeding in ET Docket No. 97-214 is TERMINATED, effective upon issuance of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary